IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6295 OF 2007

M/s. Ashoka Buildcon Ltd. .... Petitioner

versus

Niphad Sahakari Sakhar Karkhana Ltd..... Respondent.

Shri R.S.Apte i/b A.A.Garge for the petitioner
Shri S.K.Shinde for respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 23RD OCTOBER, 2007

P.C.;

1. An arbitral award came to be passed in favour of the present petitioner and against the respondent Niphad Sahakari Sakhar karkhana. Aggrieved by the award, the respondent Sakhar karkhana filed an application under section 34 of the Arbitration and Conciliation Act. The said application under section 34 came to be rejected by the court. Hence the award became enforceable under section 36 of the Arbitration and Conciliation Act. In view of that the present petitioner filed a regular Darkhast proceeding before the Principal District Judge, Nashik. The Principal District Judge Nashik being of the view that as the decree holder/petitioner intend to attach the immovable property of the respondent, which is

situated at Niphad within the territorial jurisdiction of CJSD, has transferred the decree to the court of CJSD Niphad for its execution. Surprisingly enough the Court of CJSD Niphad, by the impugned order has held that it has no jurisdiction to execute the award. It is this order passed by CJSD Niphad on 12-6-2007 which is challenged in the present petition. The Civil Judge has held that it is only Principal Civil Court of original jurisdiction in a District, which alone can execute the decree. He placed reliance on the definition of 'Court', which is to be found in 2 (1)(e) of the Arbitration and Conciliation Act 1996.

2. Section 36 of the Arbitration and Conciliation Act reads thus:

> "Where the time for making an application to set aside the arbitral award under section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the Court."

Thus section 36 makes it amply clear that the enforceable award shall be enforced under the Code of Civil Procedure and in the same manner as if it were a

decree of the court. The learned counsel for the petitioner has placed reliance on sections 38, 39 and 42 of the CPC which deals with the question regarding power of the court by which decree may be executed. Section 38 provides that a decree may be executed either by the court which passed it or by the Court to which it is sent for execution. Section 39 postulates the situation wherein the decree could be transferred for execution and to be precise sub section (1)(b) envisages that if the judgment debtor has no property within the local limits of the jurisdiction of the court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court. Here in this case the judgment debtor was stationed within the territorial jurisdiction of CJSD, Niphad and hence section 39(1)(b) applies. Section 42 clinches the issue. The said section deals with the power of court in executing transferred decree. The said section provides that the court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. Reverting back to the facts of the present case, the District Judge has transferred the decree to CJSD, Niphad. Thus the Judge will have the same power which are possessed by the Principal District Judge in executing the decree. Perusal of the impugned order reveals that as per the

analogy adopted by the trial court, the Principal District Judge alone would be in a position to execute the decree. In view of section 42, the transferree court CJSD Niphad would be very much competent to execute the decree. Thus the impugned order suffers from a patent illegality, which requires to be corrected in exercise of writ jurisdiction. It may not be out of place to mention here a further development. After the CJSD Niphad passed the impugned order dated 12-6-2007 and returned the execution proceedings to the Principal District and Sessions Judge, Nashik, the Principal District and Sessions Judge, Nashik then wrote a letter to CJSD, Niphad on 19-6-2007 wherein it is stated that the Principal District & Sessions Judge, would not pass any order as the parties are likely to question the correctness of the impugned order. In the result the impugned order passed by CJSD, Niphad dated 12-6-2007 in Darkhast No. 118/06 is quashed and set aside. I direct the executing court, CJSD, Niphad to proceed with the Reg.Darkhast in accordance with the law. Rule made absolute in above terms.

....